

## Federal Trade Commission

## § 802.53

value of over \$50 million; or made aggregate sales in or into the United States of over \$50 million in its most recent fiscal year.

(2) If controlling interests in multiple foreign issuers are being acquired from the same acquired person, the assets located in the United States and sales in or into the United States of all the issuers must be aggregated to determine whether either \$50 million threshold is exceeded.

(c) Where a foreign issuer whose securities are being acquired exceeds the threshold in paragraph (b)(1) of this section, the acquisition nevertheless shall be exempt where:

(1) Both acquiring and acquired persons are foreign;

(2) The aggregate sales of the acquiring and acquired persons in or into the United States are less than \$110 million in their respective most recent fiscal years;

(3) The aggregate total assets of the acquiring and acquired persons located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to §801.40(d)(2) of this chapter) are less than \$110 million; and

(4) The transaction does not meet the criteria of Section 7A(a)(2)(A).

*Example to §802.51 1.* “A,” a U.S. person, is to acquire the voting securities of C, a foreign issuer. C has no assets in the United States, but made aggregate sales into the United States of \$77 million in the most recent fiscal year. The transaction is not exempt under this section.

2. Assume that “A” and “B” are foreign persons with aggregate sales in or into the United States of \$200 million, and that “A” is acquiring 100% of the voting securities of “B.” Included within “B” is U.S. issuer C, whose total U.S. assets are valued at \$161 million. Since “A” will be acquiring control of an issuer, C, with total U.S. assets of more than \$50 million, and the parties’ aggregate sales in or into the U.S. in the relevant time period exceed \$110 million, the acquisition is not exempt under this section.

3. “A,” a foreign person, intends to acquire 100 percent of the voting securities of two wholly owned subsidiaries of “B” for a total of \$65 million. BSUB1 is a foreign issuer with \$10 million in sales into the U.S. in its most recent fiscal year and with assets of \$10 million located in the U.S. \$20 million of the acquisition price has been allocated to BSUB1. BSUB2 is a U.S. issuer with \$60 million in

U.S. sales and \$60 million in assets located in the U.S. The remaining \$45 million of the acquisition price is allocated to BSUB2. Since BSUB1 does not exceed the \$50 million limitation for U.S. sales or assets in §802.51(b), its voting securities are not held as a result of the acquisition (see §801.15(b) of this chapter). Since the acquisition price for BSUB2 alone would not result in “A” holding in excess of \$50 million of voting securities of the acquired person, the transaction is non-reportable in its entirety. Note that the U.S. sales and assets of BSUB1 are not aggregated with those of BSUB2 for purposes of determining whether the limitations in paragraph (b) of this section are exceeded. If BSUB2 were also a foreign issuer, such aggregation would be required under paragraph (b)(2) of this section, and the transaction in its entirety would be reportable.

[67 FR 11904, Mar. 18, 2002; 67 FR 13716, Mar. 26, 2002]

## § 802.52 Acquisitions by or from foreign governmental corporations.

An acquisition shall be exempt from the requirements of the act if:

(a) The ultimate parent entity of either the acquiring person or the acquired person is controlled by a foreign state, foreign government, or agency thereof; and

(b) The acquisition is of assets located within that foreign state or of voting securities of an issuer organized under the laws of that state.

*Example:* The government of foreign country X has decided to sell assets of its wholly owned corporation, B, all of which are located in foreign country X. The buyer is “A,” a U.S. person. Regardless of the aggregate sales in or into the United States attributable to the assets of B, the transaction is exempt under this section. (If such aggregate sales were \$50 million or less, the transaction would also be exempt under §802.50.)

[43 FR 33544, July 31, 1978, as amended at 67 FR 11904, Mar. 18, 2002]

## § 802.53 Certain foreign banking transactions.

An acquisition which requires the consent or approval of the Board of Governors of the Federal Reserve System under section 25 or section 25(a) of the Federal Reserve Act, 12 U.S.C. 601, 615, shall be exempt from the requirements of the act if copies of all information and documentary material filed with the Board of Governors are contemporaneously filed with the Federal

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Trade Commission and Assistant Attorney General at least 30 days prior to consummation of the acquisition. In lieu of such information and documentary material or any portion thereof, an index describing such material may be provided in the manner authorized by § 802.6(a).

[43 FR 33544, July 31, 1978, as amended at 48 FR 34435, July 29, 1983]

## § 802.60 Acquisitions by securities underwriters.

An acquisition of voting securities by a person acting as a securities underwriter, in the ordinary course of business, and in the process of underwriting, shall be exempt from the requirements of the act.

## § 802.63 Certain acquisitions by creditors and insurers.

(a) *Creditors.* An acquisition of collateral or receivables, or an acquisition in foreclosure, or upon default, or in connection with the establishment of a lease financing, or in connection with a bona fide debt work-out shall be exempt from the requirements of the act if made by a creditor in a bona fide credit transaction entered into in the ordinary course of the creditor's business.

(b) *Insurers.* An acquisition pursuant to a condition in a contract of insurance relating to fidelity, surety, or casualty obligations shall be exempt from the requirements of the act if made by an insurer in the ordinary course of business.

*Examples:* 1. A bank makes a loan and takes actual or constructive possession of collateral in any form. Since the bank is not the beneficial owner of the collateral, the bank's receipt of it is not an acquisition which is subject to the requirements of the act. However, if upon default the bank becomes the beneficial owner of the collateral, that acquisition is exempt under this section.

2. This section exempts only the acquisition by the creditor or insurer, and not the subsequent disposition of the assets or voting securities. If a creditor or insurer sells voting securities or assets that have come into its possession in a transaction which is exempt under this section, the requirements of the act may apply to that disposition.

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## § 802.64 Acquisitions of voting securities by certain institutional investors.

(a) *Institutional investor.* For purposes of this section, the term *institutional investor* means any entity of the following type:

(1) A bank within the meaning of 15 U.S.C. 80b-2(a)(2);

(2) Savings bank;

(3) Savings and loan or building and loan company or association;

(4) Trust company;

(5) Insurance company;

(6) Investment company registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.);

(7) Finance company;

(8) Broker-dealer within the meaning of 15 U.S.C. 78c(a)(4) or (a)(5);

(9) Small Business Investment Company or Minority Enterprise Small Business Investment Company regulated by the U.S. Small Business Administration pursuant to 15 U.S.C. 662;

(10) A stock bonus, pension, or profit-sharing trust qualified under section 401 of the Internal Revenue Code;

(11) Bank holding company within the meaning of 12 U.S.C. 1841;

(12) An entity which is controlled directly or indirectly by an institutional investor and the activities of which are in the ordinary course of business of the institutional investor;

(13) An entity which may supply incidental services to entities which it controls directly or indirectly but which performs no operating functions, and which is otherwise engaged only in holding controlling interests in institutional investors; or

(14) A nonprofit entity within the meaning of sections 501(c) (1) through (4), (6) through (15), (17) through (20), or (d) of the Internal Revenue Code.

(b) *Exemption.* An acquisition of voting securities shall be exempt from the requirements of the act, except as provided in paragraph (c) of this section, if:

(1) Made directly by an institutional investor;

(2) Made in the ordinary course of business;

(3) Made solely for the purpose of investment; and